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9 RITE AID CORPORATION

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 KIMBERLY BEAGLE,

13 Plaintiff,

14 vs.

15 RITE AID CORPORATION; and DOES
16 1 TO 100, INCLUSIVE,

17 Defendants.

Case No.: CV08-1517-PJH

**ANSWER TO EMPLOYMENT
DISCRIMINATION COMPLAINT;
DEMAND FOR JURY TRIAL**

18 Defendant Rite Aid hereby answers Plaintiff's Employment Discrimination
19 Complaint as follows:

- 20
- 21 1. Answering Paragraph 1 of the Complaint, Rite Aid admits to the
 - 22 allegations of that paragraph.
 - 23 2. Answering Paragraph 2 of the Complaint, Rite Aid admits to the
 - 24 allegations of that paragraph other than as to the identity of all
 - 25 defendants, as Rite Aid lacks sufficient information or knowledge
 - 26 to form a belief as to the truth of those allegations.
 - 27 3. Answering Paragraph 3 of the Complaint, Rite Aid admits to the
 - 28 allegations of that paragraph.

- 1 4. Answering Paragraph 4 of the Complaint, Rite Aid admits that
2 Defendant's actions are alleged to have occurred in Humboldt
3 County.
- 4 5. Answering Paragraph 5 of the Complaint, Rite Aid lacks sufficient
5 information or knowledge to form a belief as to the truth of the
6 allegations of that paragraph and denies the allegations on that
7 basis.
- 8 6. Answering Paragraph 6 of the Complaint, Rite Aid lacks sufficient
9 information or knowledge to form a belief as to the truth of the
10 allegations of that paragraph and denies the allegations on that
11 basis.
- 12 7. Answering Paragraph 7 of the Complaint, Rite Aid can neither
13 admit nor deny the allegations of that paragraph as that paragraph
14 contains only conclusions of law.
- 15 8. Answering Paragraph 8 of the Complaint, Rite Aid admits the
16 allegations of that paragraph.
- 17 9. Answering Paragraph 9 of the Complaint, Rite Aid admits to the
18 allegations in the first two sentences but Rite Aid denies the
19 allegations of the remainder of that paragraph.
- 20 10. Answering Paragraph 10 of the Complaint, Rite Aid denies the
21 allegations of that paragraph.
- 22 11. Answering Paragraph 11 of the Complaint, Rite Aid denies the
23 allegations of that paragraph.
- 24 12. Answering Paragraph 12 of the Complaint, Rite Aid denies that
25 Plaintiff ever complained to Assistant Manager Lezlee Pough about
26 Mr. Young's behavior. Rite Aid lacks sufficient information or
27 knowledge to form a belief as to the truth of the allegations
28 regarding why Plaintiff did not complain to Leon Comerer and so

1 denies those allegations on that basis. Answering the second
2 Paragraph 12 (sic), Rite Aid admits that it promoted Mr. Young to
3 the Shift Supervisor position, but denies the remainder of the
4 allegations in that paragraph.

5 13. Answering Paragraph 13 of the Complaint, Rite Aid lacks sufficient
6 information or knowledge to form a belief as to the truth of the
7 allegations regarding when during Plaintiff's shift the action alleged
8 in Paragraph 13 occurred. Rite Aid denies the remainder of the
9 allegations in Paragraph 13.

10 14. Answering Paragraph 14 of the Complaint, Rite Aid denies that
11 Plaintiff first returned to work after the alleged incident on July 8,
12 2005, as alleged in Paragraph 14, but admits that Plaintiff first
13 talked to Mr. Comerer of July 6, 2005 conduct by Mr. Young on
14 July 8, 2005. Rite Aid denies that Mr. Comerer "did not take her
15 complaint seriously" and rolled his eyes in response to Plaintiff's
16 complaint. Rite Aid lacks sufficient information or knowledge to
17 form a belief as to the allegation that Plaintiff told Mr. Comerer he
18 needed to address Mr. Young, but denies that Mr. Comerer told
19 Plaintiff to "get to work." Rite Aid lacks sufficient information or
20 knowledge to form a belief as to when Mr. Comerer left work on
21 July 8, 2005, but admits that Mr. Young arrived at work at around
22 12 p.m. that day. Rite Aid lacks sufficient information or
23 knowledge to form a belief as to what Plaintiff knew about Mr.
24 Young being addressed, or the lack thereof, and why Plaintiff
25 stated that she could not work for the remainder of that day but
26 denies that Mr. Young was the only supervisor on duty when
27 Plaintiff went home on July 8, 2005. Rite Aid lacks sufficient
28 information or knowledge about what Ms. Hussey told Plaintiff that

1 day about being excused from work. Rite Aid admits that on July
2 9, 2005, Plaintiff was medically evaluated, diagnosed with a neck
3 strain, and given a note to be excused from work.

4 15. Answering Paragraph 15 of the Complaint, Rite Aid lacks sufficient
5 information or knowledge to form a belief as to the allegations of
6 that paragraph and denies them on that basis.

7 16. Answering Paragraph 16 of the Complaint, Rite Aid admits that
8 Plaintiff's complaint against Mr. Young was known by some of the
9 store's employees but denies the remainder of the allegations of
10 that paragraph.

11 17. Answering Paragraph 17 of the Complaint, Rite Aid denies the
12 allegations of that paragraph except for the allegations that a
13 doctor placed her on medical leave for two days and that Plaintiff
14 had her prescriptions filled at the Fortuna Rite Aid store, which
15 Rite Aid admits.

16 18. Answering Paragraph 18 of the Complaint, Rite Aid lacks sufficient
17 information or knowledge to form a belief as to the allegations of
18 that paragraph and denies those allegations on that basis.

19 19. Answering Paragraph 19 of the Complaint, Rite Aid denies the
20 allegations of that paragraph except to admit that the DFEH was
21 unable to arrange a settlement of Plaintiff's claim and Rite Aid
22 terminated Plaintiff's employment in April 2007.

23 20. Answering Paragraph 20 of the Complaint, Rite Aid admits to the
24 allegations of that paragraph.

25 21. Answering Paragraph 21 of the Complaint, Rite Aid admits that the
26 DFEH issued Plaintiff a Right to Sue Notice on April 3, 2007 and
27 that Plaintiff filed her action within a year of that date, but denies
28 the remainder of the allegations in that paragraph.

1 22. Answering Paragraph 22 of the Complaint, Rite Aid admits that
2 Plaintiff mailed Rite Aid's registered agent for service of process a
3 copy of the amended DFEH complaint on February 6, 2008. Rite
4 Aid admits that the DFEH served a copy of Plaintiff's DFEH
5 complaint on Rite Aid on June 22, 2006. Rite Aid denies that
6 Plaintiff served Rite Aid with anything on March 5, 2008. Rite Aid
7 admits that informal efforts to resolve Plaintiff's DFEH complaint
8 were unsuccessful, but denies that Plaintiff had "no choice" but to
9 file this lawsuit.

10 23. Answering Paragraph 23 of the Complaint, Rite Aid denies the
11 allegations of that paragraph.

12 24. Answering Paragraph 24 of the Complaint, Rite Aid denies the
13 allegations of that paragraph.

14 25. Answering Paragraph 25 of the Complaint, Rite Aid realleges and
15 restates its responses to Paragraphs 1 through 24 and
16 incorporates them by reference as if fully set forth herein.

17 26. Answering Paragraph 26 of the Complaint, Rite Aid can neither
18 admit nor deny the allegations of that paragraph, as that
19 paragraph contains only statements of the law.

20 27. Answering Paragraph 27 of the Complaint, Rite Aid admits the
21 allegations of that paragraph.

22 28. Answering Paragraph 28 of the Complaint, Rite Aid denies the
23 allegations of that paragraph.

24 29. Answering Paragraph 29 of the Complaint, Rite Aid denies the
25 allegations of that paragraph.

26 30. Answering Paragraph 30 of the Complaint, Rite Aid denies the
27 allegations of that paragraph.
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1 31. Answering Paragraph 31 of the Complaint, Rite Aid denies the
2 allegations of that paragraph.

3 32. [Rite Aid need not respond to Paragraph 32, as the Court
4 dismissed Plaintiff's disability harassment claim.]

5 33. [Rite Aid need not respond to Paragraph 33, as the Court
6 dismissed Plaintiff's disability harassment claim.]

7 34. [Rite Aid need not respond to Paragraph 34, as the Court
8 dismissed Plaintiff's disability harassment claim.]

9 35. [Rite Aid need not respond to Paragraph 35, as the Court
10 dismissed Plaintiff's disability harassment claim.]

11 36. [Rite Aid need not respond to Paragraph 36, as the Court
12 dismissed Plaintiff's disability harassment claim.]

13 37. [Rite Aid need not respond to Paragraph 37, as the Court
14 dismissed Plaintiff's disability harassment claim.]

15 38. [Rite Aid need not respond to Paragraph 38, as the Court
16 dismissed Plaintiff's disability harassment claim.]

17 39. [Rite Aid need not respond to Paragraph 39, as the Court
18 dismissed Plaintiff's disability harassment claim.]

19 40. Answering Paragraph 40 of the Complaint, Rite Aid realleges and
20 restates its responses to Paragraphs 1 through 39 and
21 incorporates them by reference as if fully set forth herein.

22 41. Answering Paragraph 41 of the Complaint, Rite Aid can neither
23 admit nor deny the allegations of that paragraph, as that
24 paragraph contains only statements of the law.

25 42. Answering Paragraph 42 of the Complaint, Rite Aid admits the
26 allegations of that paragraph.

27 43. Answering Paragraph 43 of the Complaint, Rite Aid denies the
28 allegations of that paragraph.

1 44. Answering Paragraph 44 of the Complaint, Rite Aid denies the
2 allegations of that paragraph.

3 45. Answering Paragraph 45 of the Complaint, Rite Aid denies the
4 allegations of that paragraph.

5 46. Answering Paragraph 46 of the Complaint, Rite Aid denies the
6 allegations of that paragraph.

7 47. Answering Paragraph 47 of the Complaint, Rite Aid denies the
8 allegations of that paragraph.

9 48. Answering Paragraph 48 of the Complaint, Rite Aid realleges and
10 restates its responses to Paragraphs 1 through 47 and
11 incorporates them by reference as if fully set forth herein.

12 49. Answering Paragraph 49 of the Complaint, Rite Aid can neither
13 admit nor deny the allegations of that paragraph, as that
14 paragraph contains only statements of the law.

15 50. Answering Paragraph 50 of the Complaint, Rite Aid admits the
16 allegations of that paragraph.

17 51. Answering Paragraph 51 of the Complaint, Rite Aid denies the
18 allegations of that paragraph.

19 52. Answering Paragraph 52 of the Complaint, Rite Aid denies the
20 allegations of that paragraph.

21 53. Answering Paragraph 53 of the Complaint, Rite Aid denies the
22 allegations of that paragraph.

23 54. Answering Paragraph 54 of the Complaint, Rite Aid denies the
24 allegations of that paragraph.

25 55. Answering Paragraph 55 of the Complaint, Rite Aid denies the
26 allegations of that paragraph.

1 56. Answering Paragraph 56 of the Complaint, Rite Aid realleges and
2 restates its responses to Paragraphs 1 through 55 and
3 incorporates them by reference as if fully set forth herein.

4 57. Answering Paragraph 57 of the Complaint, Rite Aid can neither
5 admit nor deny the allegations of that paragraph, as that
6 paragraph contains only statements of the law.

7 58. Answering Paragraph 58 of the Complaint, Rite Aid admits the
8 allegations of that paragraph.

9 59. Answering Paragraph 59 of the Complaint, Rite Aid denies the
10 allegations of that paragraph.

11 60. Answering Paragraph 60 of the Complaint Rite Aid denies the
12 allegations of that paragraph.

13 61. Answering Paragraph 61 of the Complaint, Rite Aid denies the
14 allegations of that paragraph.

15 62. Answering Paragraph 62 of the Complaint, Rite Aid denies the
16 allegations of that paragraph.

17 63. Answering Paragraph 63 of the Complaint, Rite Aid realleges and
18 restates its responses to Paragraphs 1 through 62 and
19 incorporates them by reference as if fully set forth herein.

20 64. Answering Paragraph 64 of the Complaint, Rite Aid can neither
21 admit nor deny the allegations of that paragraph, as that
22 paragraph contains only statements of the law.

23 65. Answering Paragraph 65 of the Complaint, Rite Aid denies the
24 allegations of that paragraph.

25 66. Answering Paragraph 66 of the Complaint, Rite Aid denies the
26 allegations of that paragraph.

27 67. Answering Paragraph 67 of the Complaint, Rite Aid denies the
28 allegations of that paragraph.

1 68. Answering Paragraph 68 of the Complaint, Rite Aid denies the
2 allegations of that paragraph.

3 69. Answering Paragraph 69 of the Complaint, Rite Aid realleges and
4 restates its responses to Paragraphs 1 through 68 and
5 incorporates them by reference as if fully set forth herein.

6 70. Answering Paragraph 70 of the Complaint, Rite Aid can neither
7 admit nor deny the allegations of that paragraph, as that
8 paragraph contains only statements of the law.

9 71. Answering Paragraph 71 of the Complaint, Rite Aid admits that it
10 was Plaintiff's employer at the time of the actions alleged in the
11 complaint. Rite Aid denies the remainder of the allegations of that
12 paragraph.

13 72. Answering Paragraph 72 of the Complaint, Rite Aid denies the
14 allegations of that paragraph.

15 73. Answering Paragraph 73 of the Complaint, Rite Aid denies the
16 allegations of that paragraph.

17 74. Answering Paragraph 74 of the Complaint, Rite Aid denies the
18 allegations of that paragraph.

19 75. Answering Paragraph 75 of the Complaint, Rite Aid realleges and
20 restates its responses to Paragraphs 1 through 74 and
21 incorporates them by reference as if fully set forth herein.

22 76. Answering Paragraph 76 of the Complaint, Rite Aid denies the
23 allegations of that paragraph.

24 77. Answering Paragraph 77 of the Complaint, Rite Aid denies the
25 allegations of that paragraph.

26 78. Answering Paragraph 78 of the Complaint, Rite Aid denies the
27 allegations of that paragraph.
28

1 79. Answering Paragraph 79 of the Complaint, Rite Aid denies the
2 allegations of that paragraph.

3 80. Answering Paragraph 80 of the Complaint, Rite Aid denies the
4 allegations of that paragraph.

5 81. Answering Paragraph 81 of the Complaint, Rite Aid realleges and
6 restates its responses to Paragraphs 1 through 80 and
7 incorporates them by reference as if fully set forth herein.

8 82. Answering Paragraph 82 of the Complaint, Rite Aid denies the
9 allegations of that paragraph.

10 83. Answering Paragraph 83 of the Complaint, Rite Aid denies the
11 allegations of that paragraph.

12 84. Answering Paragraph 84 of the Complaint, Rite Aid denies the
13 allegations of that paragraph.

14 85. Answering Paragraph 85 of the Complaint, Rite Aid denies the
15 allegations of that paragraph.

16 86. Answering Paragraph 86 of the Complaint, Rite Aid denies the
17 allegations of that paragraph.

18 87. Answering Paragraph 87 of the Complaint, Rite Aid realleges and
19 restates its responses to Paragraphs 1 through 86 and
20 incorporates them by reference as if fully set forth herein.

21 88. Answering Paragraph 88 of the Complaint, Rite Aid can neither
22 admit nor deny the allegations of that paragraph, as that
23 paragraph contains only statements of the law.

24 89. Answering Paragraph 89 of the Complaint, Rite Aid denies the
25 allegations of that paragraph.

26 90. Answering Paragraph 90 of the Complaint, Rite Aid denies the
27 allegations of that paragraph.
28

1 91. Answering Paragraph 91 of the Complaint, Rite Aid denies the
2 allegations of that paragraph.

3 92. Answering Paragraph 92 of the Complaint, Rite Aid denies the
4 allegations of that paragraph.

5 93. Answering Paragraph 93 of the Complaint, Rite Aid realleges and
6 restates its responses to Paragraphs 1 through 92 and
7 incorporates them by reference as if fully set forth herein.

8 94. Answering Paragraph 94 of the Complaint, Rite Aid denies the
9 allegations of that paragraph.

10 95. Answering Paragraph 95 of the Complaint, Rite Aid denies the
11 allegations of that paragraph.

12 96. Answering Paragraph 96 of the Complaint, Rite Aid denies the
13 allegations of that paragraph.

14 97. Answering Paragraph 97 of the Complaint, Rite Aid denies the
15 allegations of that paragraph.

16 98. Answering Paragraph 98 of the Complaint, Rite Aid realleges and
17 restates its responses to Paragraphs 1 through 97 and
18 incorporates them by reference as if fully set forth herein.

19 99. Answering Paragraph 99 of the Complaint, Rite Aid can neither
20 admit nor deny the allegations of that paragraph, as that
21 paragraph contains only statements of the law.

22 100. Answering Paragraph 100 of the Complaint, Rite Aid admits to the
23 allegations of the first sentence of Paragraph 100. Rite Aid denies
24 the remainder of the allegations of Paragraph 100.

25 101. Answering Paragraph 101 of the Complaint, Rite Aid denies the
26 allegations of that paragraph.

27 102. Answering Paragraph 102 of the Complaint, Rite Aid denies the
28 allegations of that paragraph.

1 103. Answering Paragraph 103 of the Complaint, Rite Aid denies the
2 allegations of that paragraph.

3 104. Answering Paragraph 104 of the Complaint, Rite Aid denies the
4 allegations of that paragraph.

5 105. Answering Paragraph 105 of the Complaint, Rite Aid denies the
6 allegations of that paragraph.

7 **AFFIRMATIVE DEFENSES**

8 **FIRST AFFIRMATIVE DEFENSE**

9 As a first and separate affirmative defense to the Complaint, Rite Aid
10 alleges that the Complaint and each cause of action therein is barred as
11 Plaintiff failed to timely and properly exhaust her administrative remedies.

12 **SECOND AFFIRMATIVE DEFENSE**

13 As a second and separate affirmative defense to the Complaint, Rite Aid
14 alleges that the Complaint, and each cause of action alleged therein, is barred
15 by various statutory periods of limitations, including but not limited to those in
16 California Government Code sections 12960 and 12965(b), and those in
17 California Code of Civil Procedure sections 312 through 366.2.

18 **THIRD AFFIRMATIVE DEFENSE**

19 As a third and separate affirmative defense to the Complaint, Rite Aid
20 alleges that Plaintiff's claims are barred as she failed to mitigate her damages.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 As a fourth and separate affirmative defense to the Complaint, Rite Aid
23 alleges that the Complaint is barred in whole or in part by the exclusive remedy
24 doctrine of California's Workers' Compensation laws, *inter alia*, at California
25 Labor Code section 3600, *et seq.*

1 FIFTH AFFIRMATIVE DEFENSE

2 As a fifth and separate affirmative defense to the Complaint, Rite Aid
3 alleges that each and every claim alleged in the Complaint is barred, in whole
4 or in part, by the doctrines of waiver and consent.

5 SIXTH AFFIRMATIVE DEFENSE

6 As a sixth and separate affirmative defense to the Complaint, Rite Aid
7 alleges that Plaintiff is estopped by reason of her own conduct, acts or
8 omissions, or those of her agents, from recovering against Rite Aid on any
9 purported cause of action contained in the Complaint.

10 SEVENTH AFFIRMATIVE DEFENSE

11 As a seventh and separate affirmative defense to the Complaint, Rite Aid
12 alleges that each and every claim alleged in the Complaint is barred, in whole
13 or in part, by the doctrine of unclean hands.

14 EIGHTH AFFIRMATIVE DEFENSE

15 As an eighth and separate affirmative defense to the Complaint, Rite Aid
16 alleges that it: (a) exercised reasonable care to prevent and correct promptly
17 any unlawfully discriminatory behavior and (b) Plaintiff unreasonably failed to
18 take advantage of any preventative and corrective opportunities provided by
19 Rite Aid to avoid harm otherwise.

20 NINTH AFFIRMATIVE DEFENSE

21 As a ninth and separate affirmative defense to the Complaint, Rite Aid
22 alleges that the claims set forth in the Complaint are barred to the extent that
23 Rite Aid undertook a prompt, effective, and reasonable investigation of the
24 matters alleged.

25 TENTH AFFIRMATIVE DEFENSE

26 As an tenth and separate affirmative defense to the Complaint, Rite Aid
27 alleges that it did not have timely knowledge, constructive or otherwise, of the
28 inappropriate behavior alleged in the Complaint.

1 ELEVENTH AFFIRMATIVE DEFENSE

2 As an eleventh and separate affirmative defense to the Complaint, Rite
3 Aid alleges that Plaintiff has unreasonably delayed in bringing this action to
4 Rite Aid's prejudice, and is therefore barred from bringing this action by the
5 doctrine of laches.

6 TWELFTH AFFIRMATIVE DEFENSE

7 As a twelfth and separate affirmative defense to the Complaint, Rite Aid
8 alleges that Plaintiff's claims are barred to the extent that she engaged in any
9 fraud or misconduct which, if known, would have caused Plaintiff not to be
10 hired or to be terminated before the date of her actual termination.

11 THIRTEENTH AFFIRMATIVE DEFENSE

12 As a thirteenth and separate affirmative defense to the Complaint, Rite
13 Aid alleges that all of its acts and omissions relative to the terms and
14 conditions of Plaintiff's employment at Rite Aid were predicated upon
15 legitimate, non-discriminatory reasons and Rite Aid's legitimate business
16 interests.

17 FOURTEENTH AFFIRMATIVE DEFENSE

18 As a fourteenth and separate affirmative defense to the Complaint, Rite
19 Aid alleges that Plaintiff may not recover punitive damages for discriminatory
20 employment decisions contrary to the policies Rite Aid has instituted in good
21 faith against wrongful conduct.

22 FIFTEENTH AFFIRMATIVE DEFENSE

23 As a fifteenth and separate affirmative defense to the Complaint, Rite Aid
24 alleges that each and every claim alleged in the Complaint is barred, in whole
25 or in part, by the doctrine of equity.
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27
28

1 SIXTEENTH AFFIRMATIVE DEFENSE

2 As a sixteenth and separate affirmative defense, Rite Aid alleges that all
3 of its actions as alleged in the Complaint were reasonable and taken in good
4 faith.

5 WHEREFORE, Rite Aid prays for judgment in its favor as follows:

- 6 1. That Plaintiff take nothing by way of her Complaint;
7 2. That Rite Aid be awarded the costs of suit and attorneys'
8 fees; and
9 3. For such other and further relief as the Court may deem just
10 and proper.

11 DATED: June 18, 2008

KELLY, HOCKEL & KLEIN P.C.

13 /s/ Annmarie M. Liermann

14 JONATHAN ALLAN KLEIN

15 ANNMARIE M. LIERMANN

16 Attorneys for Defendant

RITE AID CORPORATION

17 DEMAND FOR JURY TRIAL

18 Defendant hereby demands trial by jury.

19 DATED: June 18, 2008

KELLY, HOCKEL & KLEIN P.C.

21 /s/ Annmarie M. Liermann

22 JONATHAN ALLAN KLEIN

23 ANNMARIE M. LIERMANN

24 Attorneys for Defendant

RITE AID CORPORATION